

Although claimant has had back problems for a number of years, he testified that approximately one and one-half months before seeking treatment from Dr. Tejano in April 1995 he bent over while inspecting forms and experienced a sharp burning pain in the right side of his low back that was different from what he ever previously experienced. Because the medical records indicate claimant saw Dr. Tejano on April 4, 1995, the date of this

alleged incident would be in mid-February 1995. Claimant also testified his symptoms progressively worsened while he continued to work for the respondent. Claimant acknowledges that he never advised the respondent he injured or aggravated his low back while at work and that the filing of the Form E-1, Application for Hearing, in July 1995 was the first notice to respondent of this alleged work-related injury. Based upon this evidence, the Administrative Law Judge found that claimant did not provide notice of accidental injury within 75 days of its occurrence and, therefore, notice of accident could not be timely as required by K.S.A. 44-520.

Claimant contends he gave timely notice of accident because the injury allegedly continued after the initial incident due to repetitive mini-traumas to the low back each day claimant worked through the date claimant filed his Form E-1. The Appeals Board finds claimant's argument without merit and finds that claimant has failed to prove that he sustained injury after the initial alleged incident. Neither Anthony G.A. Pollock, M.D., nor Jay Stanley Jones, M.D., whose letters were introduced at the preliminary hearing, support claimant's contention. In his letter of December 19, 1995, Dr. Pollock states:

"I reviewed Mr. McFarlane's office notes in regards to deciding whether his work has contributed to his impairment. It would seem reasonable that an individual who has had to lift 300 pounds of cement, etc. would most probably increase the pain in his back that results from his degenerative disc disease at L4-5 and L5-S1.

"Whether there is any measurable change in the appearance of his back would be open to question, but I do think that it is likely that he has increased the pain in his back and this is probably likely to continue."

In his letter, also dated December 19, 1995, Dr. Jones writes:

"Mr. McFarlane had an acute exacerbation of his previous known back symptoms in April or May of this year. I do feel there is a high degree of medical probability that Mr. McFarlane exacerbated his previous disk problem and his symptomatology due to the work that he was employed at."

Although claimant continued to work for the respondent after the early 1995 incident, the medical evidence fails to establish that claimant was injured after that date.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated January 30, 1996 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS
John David Jurcyk, Lenexa, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director